IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP NO.14496 of 2006

DATE OF DECISION: December 5, 2006

Matesh Kumar Katyal

….Petitioner

VERSUS

State of Haryana and others

….

Respondents

CORAM:- HON'BLE MR. JUSTICE VINEY MITTAL
HON'BLE MR. JUSTICE H.S. BHALLA

PRESENT: Ms.Ambika Luthra, Advocate for the petitioner.
Shri Ashok Jindal, Additional Advocate General,
Haryana for the respondents.

Viney Mittal,J.

The petitioner is aggrieved against the order dated January 18, 2005 (Annexure P.5), whereby the plot in question allotted to the petitioner was ordered to be resumed by Haryana State Industrial Development Corporation Limited (hereinafter referred to as the respondent Corporation) and the order dated August 28, 2006 (Annexure P.6), whereby the appeal filed by the petitioner was dismissed by the appellate authority.

In pursuance to an application filed by the petitioner for allotment of a plot, he was allotted plot No.138 in Kundli, Phase V, Industrial Estate, Rai measuring 312.50 square meters vide a regular letter of allotment dated April 9, 2001, a formal agreement in this regard had been entered into between the petitioner and the

respondent Corporation on April 11, 2001. The letter offering physical possession of the said industrial plot was handed over to the petitioner on May 3, 2001. The aforesaid plot was allotted for a total consideration of Rs.4,68,752/-. The petitioner had paid Rs.1,17,188/- being 25% of the said plot initially and even the remaining 75% of the consideration amount had been paid by him alongwith due interest in instalments. According to the petitioner, no further amount is due and payable by the petitioner to the respondent Corporation towards the price of the plot.

As per the terms and conditions of the allotment, the petitioner was to implement the project within a period of three years from the date of offer of physical possession and in this regard the construction was to be commenced within a period of one year of the offering of the possession.

On December 24, 2003, a show cause notice was received by the petitioner from the respondent Corporation to the effect that since he had failed to start the construction activities within a period of one year of offer of the physical possession, therefore, the plot in question was liable to be resumed. The petitioner replied to the aforesaid show cause notice through his reply Annexure P.4, requesting the respondent Corporation that the entire payment with regard to the plot in question had already been made but on account of his family circumstances and his financial problems, he could not take possession, nor could he start construction. Consequently, he requested for extension of time for starting construction. However, vide an order dated January 18, 2005, the petitioner was communicated that the plot in question was

resumed on account of violation of clause 4 of the agreement (on account of non starting of construction of the factory building). An amount of Rs.3,98,123/- was refunded through a cheque towards cost of the plot after making the requisite deduction. Against the aforesaid resumption order, the petitioner filed an appeal before the appellate authority. The appellate authority has dismissed the aforesaid appeal vide a communication Annexure P.6. It is in these circumstances that the petitioner is before this Court, through the present petition.

The claim of the petitioner has been contested by the respondent Corporation. A written statement on behalf of respondent No.2 has been filed. Although the factum of the petitioner having made the entire payment towards the price of the plot in question has not been disputed but the resumption of the plot has been defended on the ground that the petitioner had failed to start the construction activities within a period of one year from the date of offer of possession. Consequently, the respondents have maintained that the resumption order was justified and the refund of Rs.3,98,123/- was made as per terms and conditions of the allotment.

We have heard Ms.Ambika Luthra, the learned counsel appearing for the petitioner and Shri Ashok Jindal, the learned Additional Advocate General, Haryana appearing for the respondents and with their assistance have also gone through the record of the case.

As noticed above, the facts are not at all in dispute. The allotment of the plot to the petitioner for a total consideration of Rs.4,68,752/- and the payment of the entire sale consideration, including interest upon the amount, has not been disputed. It is, thus,

clear that the entire payment qua the plot in question has already been made by the petitioner. The petitioner has also admitted that he had been offered the physical possession of the plot on May 3, 2001. In these circumstances, the construction activity was to be commenced by the petitioner within a period of one year from the date of the aforesaid offer of possession and the project was required to be implemented within a total period of three years from the date of aforesaid offer.

The petitioner has pleaded, as requested before the Corporation also, that he was prevented by family circumstances and the financial difficulties in raising the construction within a period of one year, but we further find that as per the allotment letter itself, even as conceded by the respondent Corporation, that the petitioner was to implement the project within a period of three years from the date of offer of possession. Concededly, offer of possession was made to the petitioner on May 3, 2001. Thus, project in question could be implemented upto May 2004. A show cause notice was issued to the petitioner by the respondent Corporation on December 24, 2003. Although, the aforesaid show cause notice recited the non commencement of construction activities as a default of the petitioner, but the fact remains that at that point of time, the petitioner had some further time at his disposal to raise the construction and commence the project.

During the course of arguments, the learned counsel appearing for the petitioner has also requested that the petitioner be granted one final opportunity and a reasonable time to complete the construction and implement the project. The learned counsel has

maintained that since the petitioner has already made the entire payment of the plot in question, therefore, the said request made on behalf of the petitioner shall not cause any prejudice to the respondent Corporation.

Keeping in view the facts and circumstances of the case, we find that the request made by the petitioner for grant of one final opportunity to him to raise the construction is wholly justified and would meet the ends of justice also. We are also conscious of the fact that the petitioner has already made the entire payment of the plot in question.

Consequently, the present petition is allowed and the order dated January 18, 2005 (Annexure P.5) and the appellate order dated August 28, 2006 (Annexure P.6) are quashed. We further direct that the amount which the respondent Corporation has refunded to the petitioner shall be returned back by him immediately to the respondent Corporation within a period of three weeks from the date a certified copy of this order is received. If any further amount is due and payable by the petitioner, a communication in this regard shall be sent to the petitioner by the respondent Corporation. On receipt of the aforesaid communication, with regard to outstanding dues, if any, the petitioner shall, within a further period of four weeks, make the payment of all the aforesaid outstanding dues also. On receipt of the aforesaid payment, the respondent Corporation shall hand over the possession of the plot in question to the petitioner within a period of two weeks thereafter. On delivery of the aforesaid possession, the petitioner shall submit the building plans for requisite approval to the competent authority. The competent authority shall grant the

requisite approval to the aforesaid building plans. On receipt of the aforesaid approval, the petitioner shall raise the requisite construction for the industrial unit within a period of six months of the receipt of the requisite approval of the plans and thereafter commence the industrial production within a further period of three months. We, however, make it clear that if there is any further default by the petitioner of the aforesaid directions, then the present petition shall be deemed to have been dismissed and in such a situation, the resumption order shall stand revived.

We may also note that a similar view was taken by this Court in identical circumstances in CWP No.4530 of 2005 (M/s. Jaisi Designs New Delhi through its partner v. Managing Director and others), decided on July 4, 2006 and we have been informed that a Special Leave Petition against the judgment has already been dismissed by the Hon'ble Supreme Court of India.

The learned counsel appearing for the petitioner has informed us that a Special Leave Petition against the said judgment has already been dismissed by the Apex Court.

A copy of the order be given dasti on payment of charges for urgent copies.

(Viney Mittal)
Judge

December 5, 2006
KD

(H.S. Bhalla)
Judge